

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 732 of 2009

**Md. Shamim
-Vs-
State of West Bengal**

For the Appellant : Mr. Bibaswan Bhattacharyya

For the State : Ms. Faria Hossain
Ms. Moushumi Sarkar

Heard on : 27.02.2023, 03.08.2023.

Judgment on : 09.08.2023.

Ananya Bandyopadhyay, J.:-

1. This instant criminal appeal is preferred against the judgment and order dated 08.09.09 and 09.09.09 passed by Learned Additional Sessions Judge, F.T.C.-III, Sealdah in Sessions Trial No. 5(12) 2008 arising out of Sessions Case No. 3(11) 2008 corresponding to G.R. No. 927 of 2008 arising out of Narkeldanga Police Station Case No. 132 of 2008 dated 17.06.2008 under Section 376(1) of the Indian Penal Code and sentenced the appellant to suffer rigorous imprisonment for seven (7) years and pay a fine of Rs.10,000/- in default six (6) months simple imprisonment for the offence punishable under Section 376(1) of the Indian Penal Code.

2. The prosecution originated on the basis of a complaint filed by the father of the victim girl precisely stating that on 16.06.2007 at 22.30 hrs he learnt that his wife and daughter, the victim had gone to the hospital with serious injuries sustained by his minor daughter. On reaching the Eden Hospital his minor daughter disclosed that on the same date at about 21.30 hrs one Md. Shamim asked her to get "Shikhar Gutkha". His minor daughter was ravished when she gave the said article to Md. Shamim at the Chappal Works. The minor victim thereafter returned to their house at 22.00 hrs and narrated the incident to her mother and thereafter lost her consciousness.
3. Subsequently, she was taken to the Medical College Hospital for treatment wherefrom she was admitted at Eden Hospital, MCH, Gynecology Department where she was admitted being treated at N. D. Ward and prayed for appropriate action to be taken against the perpetrator.
4. Based on the aforesaid complaint Narkeldanga P.S. Case No. 132 of 2008 dated 17.06.2008 was instituted. Investigation pursued which ended in submission of charge-sheet under Section 376(2)(f) of the Indian Penal Code. Charges were framed to which the appellant pleaded not guilty and claimed to be tried.
5. The prosecution cited 13 witnesses and examined certain documents.
6. Learned Advocate for the appellant submitted that:
 - i. P.W.5, Hamida Begum has been declared hostile on the prayer of the prosecution.
 - ii. P.W.7 Dr. Biswanath Kahali examined the victim on 24.06.2008 and found no mark of injury or no evidence of recent forceful

sexual intercourse over her body or external genitalia. P.W.7 also opined on the basis of radiological examination the age of the victim was 10-11 years on the date of radiological examination i.e. on 30.06.2008.

- iii. P.W.10 Doctor Mimi Sengupta, after examining the victim on 17.07.2008 at 1.00 a.m., deposed that she did not find any injury marks over the victim's face, chest, inner side of arms, abdomen, vulva, vagina, rectum or inner sides of thigh but she found stains of matted blood over her genitalia. The injury report dated 17.06.2008 stated the Doctor to have found slight active bleeding at her vagina. In her cross-examination she stated that it would not be conclusively determined from the injury report prepared by herself as to whether the victim was sexually assaulted or not.
- iv. The Learned Court below erred in laws in admitting and/or taking into account inadmissible evidence.
- v. The charge framed by the Learned Court below was defective, vague and lacking in material particulars and such defect and/or vagueness has caused serious prejudice to the appellant.
- vi. Disregarding the contradictions in the testimonies of the prosecution witness the Learned Trial Court convicted the accused and awarded the punishment. Therefore the appeal should be allowed.

7. The Learned Advocate for the State submitted that the manner in which the minor victim was subjected to the offence of rape had been aptly established by the prosecution and the appeal should be dismissed.
8. Apart from the evidence of the victim girl being PW-9, the evidence of PW-1 to be the father of the victim, PW-4, the sister of the owner of the place of incident, PW-8, the mother of the victim who had been informed of the incident are worthy of post occurrence witnesses. PW-1 met PW-8, his wife and PW-9, the victim at the hospital. PW-2 recorded the statement of the victim under Section 164 of the Cr.P.C. on 20.06.2008. PW-3 had been the doctor on duty at Eden Hospital under Calcutta Medical College in whose presence the police officer recorded the statement of the victim. PW-4 deposed that the victim vividly described the manner in which she was ravished by the appellant explicitly stated that the appellant committed “bad things upon her”.
9. PW-5, Hamida Begum was declared hostile by the prosecution.
10. PW-6, Dr. Amitabha Das conducted the potency test of the appellant with regard to his capacity in sexual activities.
11. PW-7, Dr. Biswanath Kahali conducted the ossification test of the victim and on the basis of radiological examination on 13.06.2008 opined the age of the victim to be of 10-11 years.
12. PW-8, the mother of the victim re-iterated narrative of the victim.
13. The statement of the victim/PW-9 before the police officer on 17.06.2008, her statement recorded under Section 164 of the Cr.P.C. marked as exhibit-1 as well as her deposition before the Court are corroborative in nature

without any deviation. The victim stated to have suffered bleeding from her private parts which has been detected through the injury report marked as exhibit-7 dated 17.06.2008, as examined by PW-10 which states as follows:

“On examination I found no scratch marks or signs of injury over face. No injury marks seen over chest, inner sides of arms or abdomen. The girl is prepubertal and breast development is minimal.

On examination of genitalia, there is no pubic hair growth. There are stains of matted blood over genitalia. There is no signs of injury over vulva, vaginal, rectum or inner sides of thigh. Swabs from introitus high vaginal and rectum have been taken. Clothing has been preserved. Active bleeding per vaginal is slight at present. No bleeding per rectum. Rest of information in the bed head ticket P.V examination not done as patient is restless and unmarried. Prognosis grave. Place of admission ND Ward, Eden Hospital for further management. I took the L.T.I of Baichan Bibi in the injury report as the examination was done in her presence. I have noted the identification marks of the patient as follows:

- 1. Mole at the left corner of the mouth.*
- 2. Mole over right collar bone.”*

14. The minor victim girl suffered tremendous trauma and prognosis was grave in the opinion of PW-10. The appellant at the pretext of an errand summoned the minor victim girl to a room, bolted it from inside and satisfied his illegal gratification at the expense of ruining the innocence and chastity of a minor girl which was appalling, horrifying, despicable to betray and devastate the minor victim girl and her consciousness physically and mentally.
15. The defence could not cite any instance of enmity or rivalry in order to falsely implicate the appellant. The appellant acted as predator and ruthlessly exploited the minor victim as prey which was condemnable and heinous. Such odious and abominable act on the part of the appellant is

reprehensible to have raked and tormented a minor victim girl's psyche in her body, soul and spirit.

16. From the records it transpired that the appellant has served out the sentence.
17. The solitary evidence of the minor victim to have undergone such pernicious inhumane experience is absolutely believable, trustworthy and credible without an iota of doubt or suspicion. The prosecution has aptly proved its case and accordingly the instant criminal appeal is dismissed.
18. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
19. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)